IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Padam Singh. Versus Union of India & ors.

S.B. Civil Writ Petition No. 5419/2003

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Date of Order: March 01, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Mukesh Vyas, for the petitioner.
Mr. Ravi Bhansali, for the respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to grant him the disability pension.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was recruited in Army on 14.4.1977; however, during the training, when revealed that he was suffering from a disease known as “Guinea worm”, he was referred to the Military Hospital, Gaya and he underwent the treatment from 4-7-1977 to 5-8-1977 as a case of

"Dracontiasis." A Medical Board was constituted and he was placed in Low Medical Category "EEE". His disability was assessed by the Medical Board at 15% to 19% and the Medical Board was of the opinion that petitioner's disability was neither attributed to nor aggravated by the military service and accordingly he was invalidated from the service on the basis of the opinion of the Medical Board.

It appears that the disease commonly known as "Guinea worm" has an impact in the area of Western Rajasthan and from any point of view, it cannot be said that this disease has any nexus with the military service and, therefore, in my view, the Medical Board was right in opining that the disease suffered by the petitioner is neither attributed to nor aggravated by the military service. Even otherwise, the Medical Board assessed the disability less than 20%. Rule 173 of the Pension Regulation for the Army, 1961 is a provision governing the grant of disability pension, which provides that the disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributed to or aggravated by military service is non-battle casualty and is assessed at 20% or over. Thus, the entitlement for disability pension is if the disability is assessed at 20% or over, whereas in the instant case, the disability of the petitioner was assessed less than 20%

and as such he is not entitled for disability pension.

The writ petition is, therefore, dismissed. The stay petition also stands dismissed. There shall be no order as to costs.

(H.R. PANWAR), J.

mcs